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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,950	06/18/2003	Reiner Hermann	HOE-762	3843

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LAW OFFICE OF BARRY R LIPSITZ  
755 MAIN STREET  
MONROE, CT 06468

EXAMINER
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SAM, CHARLES H

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/606,950	HERMANN, REINER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles H. Sam	3731	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-4,8-12,14-16 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Geistauts 3128768. Geistauts disclose a drilling tool for a surgical drilling machine including a drill bit which comprises a shaft 16, a tip and a coupling member (10A,18) for establishing a rotary connection to a rotary drive D for the drilling machine, wherein a surrounding proximal protective sleeve 10 having a proximal and a distal end is mounted on the shaft 16 and a distal protective sleeve (11,12) is resiliently insertable into said proximal protective sleeve 10 and surrounds the drill bit between the distal end and tip of the drill bit over at least a portion of the length thereof, wherein the proximal protective sleeve 10 comprises a rotation preventing means 18 which prevents rotation of the proximal protective sleeve 10 relative to the drilling machine when a drill bit is inserted in the drilling machine.

Regarding claim 2; Geistauts teaches the shaft 16 can be adjusted relative to the support 17 or distal protective sleeve (11,12).

Regarding claim 3, Geistauts teaches the proximal protective sleeve 10 which is mounted on the shaft 16 of the drill bit such as to be rotatable about the longitudinal axis thereof.

Regarding claim 4, Geistauts teaches the proximal protective sleeve 10 and the shaft 16 of the drill bit comprising open peripheral groove in which engages at least one common bearing element.

Regarding claim 8, Geistauts teaches the rotation preventing means 18.

Regarding claim 9, Geistauts teaches the proximal protective sleeve 10 which is fixable in the drilling machine in the axial direction.

Regarding claim 10, Geistauts teaches the proximal protective sleeve 10 comprising at least one recess 10D into which a locking projection 18 of the drilling machine is inserted.

Regarding claim 11, Geistauts teaches the proximal protective sleeve 10 carrying a stop member 18 preventing the displacement of the drill bit 16 in the distal direction.

Regarding claim 12, Geistauts teaches the coupling member (10A,18). Note figures 1,2 and 5.

Regarding claims 14-15, Geistauts teaches a helical spring 15 surrounding the shaft 16 as shown in figures 2-3.

Regarding claim 16, see column 2, lines 41-47.

Regarding claim 19, Geistauts teaches a slip ring 12A. Note figure 2.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Geistauts 3128768 in view of Simpson et al. 5047040. Geistauts discloses the invention as claimed except for an elastically deformable bearing element. However, Simpson shows in figure 2A the elastically deformable bearing element 29a and 29b. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Geistauts by including the O-ring in view of Simpson to provide a rotary seal when the sleeve rotates relative to each other.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geistauts 3128768 in view of Zurbrugg et al. 5219174. Geistauts discloses the invention as claimed except for a collar having a peripheral groove for accommodating an O-ring. However, Zurbrugg shows in figures 1-3 a collar 31 having a peripheral groove for accommodating an O-ring 39. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Geistauts by having a collar with a peripheral groove for accommodating an O-ring in view of Zurbrugg to provide a seal stop when the sleeve is slid.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geistauts 3128768. Regarding claim 17, the recited non-round cross-section of the distal protective sleeve would have been an obvious matter of design choice, since applicant has not disclosed that having this specific cross-section solves any stated problem or is for any particular purpose.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Geistauts 3128768 in view of Huebner 6030162. Geistauts discloses the invention as claimed except for a depth scale. However, Huebner shows a depth scale 74 for measuring the depth of the wire 72 into the bone. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to modify Geistauts by including a depth scale in view of Huebner for checking the depth of the drill bit.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles H. Sam whose telephone number is (571) 272-4703. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

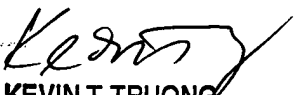
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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

chs

chs

December 20, 2004

  
KEVIN T. TRUONG  
PRIMARY EXAMINER